

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

PAUL OUYANG)	
Claimant)	
)	
VS.)	
)	
HEN HOUSE MARKET)	
Respondent)	Docket No. 261,603
)	
AND)	
)	
FOUR B CORP.)	
Insurance Carrier)	

ORDER

Claimant requested review of the June 28, 2006, post award attorney fee Order entered by Administrative Law Judge Steven J. Howard.

ISSUES

The Administrative Law Judge (ALJ) found that claimant's request for post award medical was unrelated to his occupational accident and limited attorney fees to claimant's counsel to \$1,000.

Claimant contends that he proceeded in good faith in seeking post-award medical treatment and the ALJ arbitrarily reduced his attorney fees only because his medical condition was ultimately found to be non-work related. Claimant requests that the ALJ's Order be modified to grant him the full amount of attorney fees requested.

Respondent and its insurance carrier (respondent) argue that claimant's attorney is not entitled to attorney fees prior to filing the Application for Post Award Medical, which was prepared on June 7, 2005, and filed on June 16, 2005. Respondent also argues that claimant's attorney is not entitled to attorney fees after the August 16, 2005, hearing. Respondent also asserts that claimant's attorney should not be awarded attorney fees for the time involved in preparing for and taking the deposition of Dr. Bryan Burns, claiming he should have waited to take the deposition after the post award medical hearing scheduled on August 16, 2005, which, according to respondent, is the proper procedure

under the ALJ's local rules. Accordingly, respondent requests that the ALJ's Order be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the record presented to date, the Board makes the following findings of fact and conclusions of law:

Claimant suffered bilateral carpal tunnel syndrome as a result of repetitive use while working for respondent. He settled his workers compensation claim on March 7, 2003, leaving his open his right to future medical upon proper application to the Director.

In April 2005, claimant contacted his attorney, complaining that the symptoms in his hands and arms had gotten progressively worse. Claimant's attorney contacted respondent through its attorney and requested authorization for claimant to receive additional treatment. Claimant's attorney advised respondent that claimant had been in a motor vehicle accident in September 2002 in which his left hand suffered injury. Respondent asked to review claimant's medical treatment records following the motor vehicle accident. Since Dr. Douglas Cusick treated claimant for the injuries incurred in his work-related accident and for the injuries incurred in the intervening motor vehicle accident, respondent requested that he review the medical records and issue an opinion concerning causation of claimant's current symptoms. However, before Dr. Cusick issued his report concerning causation, claimant filed an application for post award medical. Apparently, a few days after the filing of the application for post award medical, Dr. Cusick issued his opinion that claimant's current need for treatment was a result of the motor vehicle accident and not his work-related injury. This report, however, is not a part of the record.

This matter was scheduled for hearing on the application for post award medical on August 16, 2005. Claimant's attorney took the deposition of Dr. Bryan Burns, claimant's primary care physician, on August 11, 2005. On August 17, 2005, the ALJ ordered respondent to provide claimant with a list of three physicians to provide an independent medical examination of claimant and issue an opinion concerning the causation of claimant's current symptoms. Respondent provided claimant with this list, and claimant chose Dr. Bruce Toby to provide the ordered examination. After being provided claimant's medical records, Dr. Toby declined to examine claimant. Claimant then chose Dr. John Moore to examine him and issue a causation opinion.

Dr. Moore initially saw claimant on November 11, 2005. At that time he indicated that his impression was that claimant's symptoms were not related to his work injury. He, however, arranged for nerve conduction studies. After reviewing the results of the tests, Dr. Moore concluded there was no evidence of a recurrence of claimant's work injury. Instead, Dr. Moore related claimant's upper extremity symptoms to cervical radiculopathy rather than carpal tunnel syndrome. At this point, claimant discontinued his request for post award medical.

Claimant filed a motion for attorney fees in connection with the application for post award medical. The itemized invoice attached to the motion set out 24.1 hours of time spent at \$125 per hour. Respondent filed a motion in opposition to claimant's request. After a hearing, the ALJ granted claimant's motion for attorney fees, but limited the fee to the sum of \$1,000, stating that "claimant's request for medical was unrelated to his occupational accident."¹

The Kansas Workers Compensation Act permits a claimant to request post award medical benefits² and authorizes an award of attorney fees in connection with such a request.³ K.S.A. 44-536(g) states in part that if the services rendered in prosecuting an application for post medical award "result in a denial of additional compensation, the director may authorize a fee to be paid by the respondent." The purpose of the attorney fee statute is to encourage attorneys to represent claimants in circumstances where there is no additional award of disability compensation from which a fee could be taken.⁴

The Board finds no merit in respondent's arguments that claimant's attorney should not be entitled to attorney fees for the period before the application for post award medical was filed or for the period after the hearing on August 16, 2005, when the ALJ ordered an independent medical examination of claimant. Nor does the Board find that claimant's attorney should be denied fees for the time involved in preparing for and taking the deposition of Dr. Burns.

After reviewing the invoice submitted by claimant's attorney, the Board finds that the number of hours claimed and the hourly rate of \$125 are reasonable.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Steven J. Howard dated June 28, 2006, is modified and claimant is granted \$3,012.50 in attorney fees incurred in association with claimant's request for post-award medical benefits.

IT IS SO ORDERED.

¹ ALJ Order filed June 28, 2006.

² K.S.A. 44-510k(a).

³ K.S.A. 44-510k(c); K.S.A. 44-536(g).

⁴ *Robinson v. Golden Plans Healthcare*, No. 239,485, 2004 WL 2522324 (Kan. WCAB Oct. 25, 2004); *Ford v. PPG Industries, Inc.*, No. 242,425, 2003 WL 22704140 (Oct. 31, 2003).

Dated this _____ day of August, 2006.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Steven R. Jarrett, Attorney for Claimant
Timothy G. Lutz, Attorney for Respondent and its Insurance Carrier